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In the Matter of **APR 17 2000**
~~FEDERAL COMMUNICATIONS COMMISSION~~
 Amendment of the Commission's Rules
~~OFFICE OF THE SECRETARY~~
 Regarding Installment Payment Financing for
 Personal Communications Services (PCS)
 Licenses

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has before it a complete record detailing the deleterious effects of unnecessarily restricting participation in spectrum auctions.^{3/} Encouraging small business participation is only one of numerous objectives that Congress directed the Commission to satisfy in designing its competitive bidding procedures. Section 309(j)(3) also requires the Commission to promote the “rapid deployment of new technologies, products, and services for the benefit of the public;” recover for the public a part of “the value of the public spectrum resource;” and ensure “efficient and intensive use of the . . . spectrum.”^{4/} As the current record demonstrates, eliminating the designated entity set aside for the C and F block reauction (while retaining bidding credits) and dividing the 30 MHz licenses as proposed by the Petitioners is the most effective and efficient way for the Commission to satisfy all the goals established by Congress.^{5/}

^{3/} Public Notice, Wireless Telecommunications Bureau Seeks Comment on Nextel Communications, Inc.’s Petition Regarding PCS C and F Block Spectrum, Extension of Filing Deadline for Comments to SBC Communications Inc.’s Request for Waiver, DA 00-191 (released February 3, 2000); Public Notice, Wireless Telecommunications Bureau Seeks Comment on SBC Communications Inc.’s Request for Waiver of the Eligibility Requirements for Participation in the Upcoming PCS C and F Block Auction, DA 00-145 (released January 31, 2000).

^{4/} 47 U.S.C. § 309(j)(3)(A), (C)-(D).

^{5/} The Commission has clearly provided more than adequate notice and opportunity to comment on the various proposals on the eligibility rules for Auction 35, in accordance with the requirements of the Administrative Procedure Act, 5 U.S.C. § 553. The Petitioners’ proposal is a “logical outgrowth” of the petitions of Nextel, SBC, AT&T, and others to establish broader eligibility for this auction, and as such could have been advanced and adopted in the proceeding already open to consider those petitions. See, e.g., American Water Works Assoc. v. EPA, 40 F.3d 1266, 1274 (D.C. Cir. 1994); City of Stoughton, Wis. V. EPA, 858 F.2d 747, 753 (D.C. Cir. 1988) (“[a] contrary rule would lead to the absurdity that . . . the agency can learn from the comment on its proposals only at the peril of staring a new procedural round of commentary”) (citation omitted). Here, the Petitioners have sought further reconsideration of the Order on Reconsideration so that the Commission can ensure that its auction eligibility rules “take into account the relevant facts that [have] been presented” by Nextel, SBC, AT&T, and others. Petition at 2 & n.5. No interested member of the public can reasonably claim a lack of notice or an opportunity to comment on the Petitioners’ proposals.

The small business set aside is a vestige of the first PCS auctions five years ago. It was adopted when the Commission lacked experience with competitive bidding, and the Commission has subsequently abandoned the set aside in favor of bidding credits as a more effective means of promoting small business participation in spectrum auctions. Given the Commission's considerable experience with auctions and the substantial growth in wireless competition since 1994, there is no basis for continuing to rely on an experimental method for awarding licenses that has yielded mixed results at best.

The Petitioners' proposal to divide each of the 30 MHz licenses into three equal blocks, together with eliminating the set aside, will best effectuate Congress's goals. Unless the Commission decides to revise the spectrum cap for this auction as requested by AT&T and other parties,^{6/} auctioning 30 MHz licenses will effectively preclude many existing licensees from participating in this auction to obtain the spectrum they need to provide quality mobile services today and deploy new technologies and services in the future.^{7/} In a number of markets, AT&T's systems are being used to capacity. AT&T's deployment of 3G advanced services (including broadband data services) and fixed wireless services will also be significantly hindered without additional spectrum.^{8/}

The Cellular Telecommunications Industry Association ("CTIA") notes in its just-released survey of the wireless industry that "[m]ore than 16.8 million net new subscribers were added during 1999, which is 45,924 new subscribers every day -- one every two seconds." In

^{6/} See Public Notice, Wireless Telecommunications Bureau Seeks Comment on AT&T Wireless Services, Inc., BellSouth Corporation and Bell Atlantic Mobile, Inc. Petitions Regarding CMRS Spectrum Cap Limits, DA 00-318 (released February 18, 2000).

^{7/} See 47 U.S.C. § 309(j)(3)(A) (auction process should encourage the rapid deployment of new technologies and services).

^{8/} See AT&T Wireless Services, Inc. Petition for Waiver of the CMRS Spectrum Cap Requirements of 47 C.F.R. § 20.6 for the PCS Frequency Blocks C and F Auction To Begin on July 26, 2000, Declaration of Douglas I. Brandon at 2 (February 15, 2000).

addition, “wireless service subscribers are using their devices an average of 180 minutes each month, compared to the 130 minutes for local calls a year ago, an increase of 38.5%.”^{9/} In light of this phenomenal growth in the wireless industry, carriers have an immediate need for more spectrum to meet the demands of both existing and future customers for mobile, fixed, and advanced services. Allowing AT&T and other companies to supplement their existing holdings with a 10 MHz license in key markets would help ensure that these demands are satisfied.

Dividing the spectrum would also promote its efficient use and provide the public with a fair return on the sale of the licenses^{10/} far more effectively than an auction of 30 MHz authorizations. As noted above and in numerous comments in these proceedings, many existing licensees are precluded by the spectrum cap from acquiring more than 10 or 15 MHz of spectrum in a given market. In an auction of 30 MHz licenses, they would be forced to sell spectrum they win above the permitted amounts quickly in the secondary market. Such a forced sale would provide no benefit to the government, and the Commission would have no assurance that the licenses will end up in the hands of the parties who intend to put them to their highest and best use.

Auctioning the spectrum in smaller blocks would also benefit small businesses by permitting them to make more intensive use of the spectrum. Many companies will not need 30 MHz of spectrum to enter the market, and requiring them to compete for, and acquire, a 30 MHz license would be both inefficient and costly. Small businesses that cannot afford to bid on 30 MHz could find themselves shut out of the auction altogether. By contrast, businesses (small or otherwise) that need and can afford up to 30 MHz could bid on two or three licenses according to

^{9/} See CTIA News Release, U.S. Wireless Surges -- More than 90 Million Subscribers, CTIA Reports 1999 Survey Results: Americans Use Wireless Significantly More (April 10, 2000).

^{10/} 47 U.S.C. § 309(j)(3)(C)-(D).

their requirements and financial capabilities. Dividing the spectrum as the Petitioners suggest is the best solution available to satisfy all the statutory mandates and ensure the widest possible participation in the auction.

While there are other options for disaggregating the 30 MHz licenses, AT&T believes that creation of three 10 MHz licenses would best promote the public interest. Nextel's proposal, for instance, to bifurcate the 30 MHz blocks into one 20 MHz license and one 10 MHz license would suit Nextel's business plans nicely, but would unnecessarily limit auction participation. Although there may be certain economies associated with auctioning larger license blocks, a 20-10 split would create intense competition for the single remaining 10 MHz license from both existing licensees facing spectrum cap issues and small businesses that do not need and cannot afford more spectrum. At the same time, bidding activity on the 20 MHz license could be very slow in many markets, artificially dampening its value. Combining this bifurcation with Nextel's "bulk bidding" proposal could effectively create a virtual private auction of most of the available spectrum for Nextel's sole benefit.^{11/} The Commission should reject this proposal without further consideration.

To the extent the Commission continues to believe that a small business set aside is warranted for at least some of the spectrum in this auction, it should use a methodology that combines the Petitioners' proposed 10-10-10 split and a compromise recently suggested by SBC to set aside spectrum for designated entities in smaller markets.^{12/} As SBC notes, the designated entity strategy has worked relatively well in many small to medium-sized markets but has

^{11/} Likewise, Nextel's proposal for a more stringent build-out requirement would have the effect of further hindering small business participation.

^{12/} See Letter to Kathleen O'Brien Ham, Deputy Chief, Wireless Telecommunications Bureau, FCC, from Wayne Watts, Vice President and Assistant General Counsel, SBC Operations, Inc., DA 00-191 and DA 00-318 (March 21, 2000).

generally failed in major markets.^{13/} AT&T proposes that the Commission limit bidding eligibility to designated entities on one 10 MHz license in all markets that have a population of less than 1,090,870. Small entities would also retain their bidding credits for use in every market. This proposal would reserve a 10 MHz license for designated entities in all but the top 10 percent of the BTAs in the United States, encouraging small businesses where they have the best chance of success.^{14/} And by limiting the set aside to one of three available 10 MHz licenses in select markets, it would give all bidders -- large and small, incumbent and new entrant -- a meaningful chance to acquire the spectrum they need to compete.

CONCLUSION

For the foregoing reasons, the Commission should adopt the Petitioners' proposals for the C and F block reauction: (1) divide the 30 MHz licenses into three 10 MHz blocks; (2) allow all parties to participate in the auction without regard to size; (3) adopt tiered bidding credits for small businesses; and (4) use a simultaneous, multiple-round auction on a BTA basis without aggregation limits. If the Commission nonetheless believes that a designated entity set aside is

^{13/} Id.

^{14/} SBC's suggested population threshold of 700,000 might establish a market size appropriate to the resources of most small businesses, but AT&T believes that there are some designated entities that could create a viable business in larger markets, including all but the most populous 10 percent of the BTAs in the country. This is especially the case in light of the Commission's decision to treat companies like Omnipoint as designated entities for purposes of this auction even though they far exceed the "entrepreneur" eligibility criteria. See Order on Reconsideration at ¶¶ 6-8 (declining to reconsider the rule that permits entities who were eligible to bid in Auction 22 to bid on C block spectrum in any auction for a period of two years even if they subsequently become too large to qualify as entrepreneurs).

appropriate, it should reserve one of the 10 MHz blocks in less populated markets for entrepreneurs and small businesses.

Respectfully submitted,

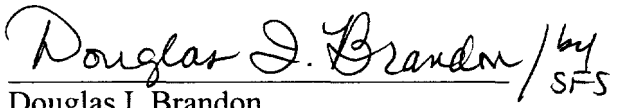
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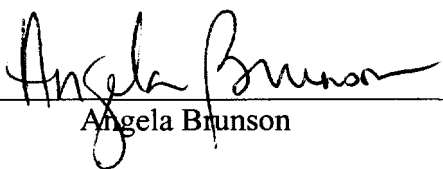
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